

K. Jenkins *8135.6/15*
CONSTITUTIONAL MAXIMS,

EXTRACTED FROM A
DISCOURSE
ON THE
ESTABLISHMENT
OF A
NATIONAL and CONSTITUTIONAL
FORCE.

BY CHARLES LORD HAWKESBURY.

"No kingdom can be secured, otherwise than by *arming the*
" *People*. The possession of ARMS is the distinction between
" a FREEMAN and a SLAVE."

POLIT. DISQ. vol. II

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CONSTITUTIONAL MAXIMS

DISCOURSE

ESTABLISHED

OF THE

FOUR

BY CHARLES COBB



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AMERICAN CONVENTION SOCIETY

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CONSTITUTIONAL

MAXIMS, &c.

THE constitution of every *free* government is subject from time to time to a sort of dangerous crisis; which demands the attention of all who are concerned in its preservation; a body, whose parts are so various, and so nicely framed, is by nature liable to frequent disorders. The fluctuation of property, the change of manners, or disposition of the people, and the shifting of power from one neighbouring state to another, must variously affect it: in absolute monarchies, evils of this kind seldom happen, and are easily removed by the interposition of that power, whose will is the simple and sole resource of such a government; but in the more complicated machine of a free state, greater caution must be used; *if the constitution is only through age impaired, it must be called back to its first principles*, but if some new emergency has arisen, a new remedy must be applied; such an one, however, as is agreeable to the nature of the constitution, and capable of being woven into the very spirit of it: lest it should chance to form an interest contrary to it, and in the event prove more fatal than the disorder.

The militia act, which passed the 13th of Charles II. d. was in itself a vague and ill-concerted schema; and the detestable policy of that, and a subsequent reign, was to disarm the people; and with the utmost art and application to render this plan of militia still more useless, and if any methods were proposed to make it serviceable, the court would never suffer them to be debated; and such officers as were more zealous than others in exercising their companies were reprimanded, as fomenters of rebellion: one could have wished therefore that those persons, to whom we are indebted for so many wise regulations in the year 1688, had planned some new militia law, more capable of execution, and more agreeable to the temper of our constitution, than that, the defects of which they could not but have perceived; such a work would have completely crowned this almost perfect establishment; Liberty would then have rested secure: whilst her own votaries held the sword, which gave her protection; and Britain, confiding in her own internal force, would have heard unalarmed at any attempt, which a foreign power might threaten against her.

Any person not liable to be alarmed with unreasonable apprehension

prehenſions, would wiſh, that ſome farther ſecurity was provided, and that ſome internal conſtitutional defence, was eſta- bliſhed; which might preſerve us not only from the evil, but from (what in a commercial kingdom, eſpecially is of no ſmall conſequence) the frequent terrors of it: can we ſufficiently wonder, that a country like this, diſtinguiſhed by ſuch a variety of bleſſings, and where Commerce has heaped up ſuch immense ſtores of wealth, ſhould be leſs careful of its own ſecurity, than almoſt any other nation upon earth—*leſs even than thoſe king- doms, the miſeries of whoſe governments make them hardly worth preſervation?*—And yet, when we conſider the natural advan- tages which it enjoys, we ſhall find no Country, perhaps, more capable of its own defence; it abounds in natives; and, as an iſland, is not ſubject to any ſudden or unexpected attack; it wants no gariſoned Frontier to delay the approach of an ene- my; a ſufficient time muſt always be given it to put any well- concerted plan of defence into execution: as much, however, as we have been engaged in wars for theſe laſt ſeventy years no ſuch plan as this has as yet been eſta bliſhed:—ſudden, tem- porary, and eventually deſtructive expedients, have been the whole of our Miniſterial Conduſt. We have juſt lived from year to year, and all our Political art has been to deliver our- ſelves in the laſt winter from the difficulties which we had laid ourſelves under in the preceding.

Our Saxon anceſtors, as much as they are ridiculed for their ignorance and barbarity, were poſſeſſed of one piece of knowledge, ſuperior in real uſe to many modern refinements, I mean that of wiſely conſtituting civil ſocieties; their military eſta bliſhments were, however, the moſt diſtinguiſhing parts of their governments; by theſe they were ALL BOUND to the defence of their country, whenever it was attacked; and the nature indeed of ſociety ſeems to require, that they, who enter into it for the preſervation of their property, ſhould *equally join* in repelling any attempt that might be made upon it; this obligation, therefore, was the common fealty and al- legiance which *every native owed*; and which, if neglected or reſuſed, according to the old Saxon law, rendered the party guilty of high treaſon againſt his country, and his eſtate under the penalty of forfeiture:—Theſe were called forth into ſervice as often as occaſion required, *by the command of the general af- ſembly or gemot*; and ſo far was the chief magiſtrate from hav- ing any authority in this reſpect, that as long as our anceſtors remained in Germany, *he was himſelf occaſionally choſen by the ſame aſſembly*, that gave orders for this militia to march; but when the Saxons came over into this iſland, and the office of principal magiſtrate through the neceſſity of affairs, from tem- porary, became perpetual, the power of the militia ſtill continued in the ſame hands; *the king indeed went in and out before his people*

people, and led them to battle; but he could not legally call them out into service without the common consent: and though on some urgent and extraordinary events the usual forms of government in those simple ages might be omitted, and the people confiding in their prince might come forth at his sole motion to defend their country; yet this they did upon consideration of the necessity, not from any opinion of the right: once a year they were constantly mustered; and when they went to war, they collected themselves together in those little bodies, called Decennaries, and thereby each man fought in the sight of his relations or associates: their rule of discipline was strict; it was not however settled at the discretion of the prince, but by the orders of the general Gemot.

At length, however, when the Feodal Tenures came to be grafted on the old *Saxon* constitution, another species of militia was then in vogue, more acceptable to *princes of an arbitrary turn of mind* than the former, as being more subject to their commands; this may be termed the *Feodal militia*, to distinguish it from the other, which I call the *Saxon* or *National*.

As this new kind of militia was the favourite of the crown, the *Saxon* or *National* lay for some time very much neglected; we have, however, some distant traces of it in the time of *Henry* the Second, and *Henry* the third, when certain assizes or assessments of arms were made, which determined the particular portion that each man was to have according to his possessions: but the first mention we meet thereof in our statutes is in the thirteenth year of *Edward* the first, when it was enacted, *That all natives should be armed that were between the ages of fifteen years and forty*†; they who had fifteen pounds a year in land, or forty marks in goods, were to keep by them the arms of a horseman; and they the whole of whose possessions were inferior to twenty marks, were not to be without their sword and battle-ax to defend their country.—Constables were to be chosen twice every year, who in their respective hundreds were to have the inspection of arms, and to present defaulters; and we are told at the beginning of this statute, that this was no new law or institution, but all was done “according to the ancient assize.”

The next material particular that concerns the militia, we meet with in the reign of *Queen Mary*, in the fourth year of which we find that a new assessment of arms was made upon the people according to their possessions; that, which had been so long ago as the thirteenth of *Edward* the first, remained still in force: the proportions of it were, however, become very unequal, as property had since that time very much increased in value, and passed through various alterations. This last assessment pursued the same plan as the former, and assessed

† Note. 13, Ed. 1, c. 6, says SIXTY YEARS NOT FORTY

not only the possessors of lands, but also of goods, and went so low, that he, whose wealth exceeded not the value of ten pounds in chattels, was comprehended in it; but this statute, by reason of the too great proportions which it imposed, lasted not long; for in the first year of *James the First*, it was repealed; and by the twenty-fifth of the same king, the thirteenth of *Edward the First* was also taken away.

So that this species of militia seems by these repeals to have been wholly extinguished; though that great obligation (which every member of society must always be under, and which was one of the first principles of our Constitution), of being obliged to defend the community, whenever it was attacked, could not but still subsist.

Whoever also has cursorily perused the history of our own country must have observed, that those reigns, in which the martial spirit of our people has most appeared, have been no less distinguished by the advances, that were then made by commerce: I shall instance only in the reign of *Edward the third*, when *Scotland, France, and Spain*, felt the successful efforts of our arms; when the national militia was in vogue, often trained and frequently called into service; when the legislature thought it an object worthy their attention, and passed several laws in its favour,—and what part of our annals can produce more good statutes in support of trade? Or, did commerce at any time take larger strides towards perfection?—This cannot be better proved, than by observing, that in the twenty-eighth year of this king, our exports were to our imports, as more than seven to one; this was a surprising balance of trade in our favour; and shews that our manufacturers must at that time have been in a flourishing condition, that our people were by no means idle, and that their military accomplishments, which they were ready at all times to exert in the service of the public, proved no obstruction to the attention they otherwise paid to their domestic occupations

But we need not enter into a long deduction of historical facts to prove this; since *reason*, a better guide, will teach us, that a certain degree of military strength in a nation is absolutely necessary, as well for the encouragement as the preservation of trade. Commerce loves security, not such as can arise from the protection of another, but such as places the power in her own hands; and on which she can fully depend. No one will labour to “have,” if he is not certain he shall be able to “hold.”—A precarious possession would be but a bad encouragement to dangerous voyages and painful occupations; and no merchant will with zeal and pleasure apply himself to trade, unless he has a good opinion of the wisdom and conduct of the state, that is to secure his acquisitions;—that it is established on foundations which cannot easily be shaken,

nor

nor consequently in danger of any sudden revolution; and as he requires good laws to protect him from domestic oppressions, so must he no less have a well-constituted internal force to secure him from foreign invasions.

Besides, we may allow some degree of reasonable ambition to every honest trader; which stimulates him in his profession, by the hopes he entertains of being qualified, by means of his acquisitions, to bear a share one time or other in the government of his country; but if such a state is despicable abroad, and defenceless at home, how much must this laudable sting and encouragement be diminished, when the Government, by its ill conduct, is got below his ambition, and when, long before the happy period of his pre-eminence can arrive, his country and his own possessions may have perished together?

And if an internal force was ever necessary for the support of trade, it is now more particularly so, when our numerous and distant colonies demand the protection of our navies—when our commerce is vulnerable in more parts than it was formerly, and our fleets must leave the head of our dominion, whose defence was once their only occupation, to repel every attack that may be made on the exterior parts of it;—they can no longer parade it in our channel alone; the most distant coasts of the world demand their service; and experience convinces us of the necessity of this dilemma, either that we must establish an internal constitutional force for the defence of our own country, and send forth our fleets for the protection of our colonies, or keep our navy at home for the preservation of the former, and leave the latter an easy prey to the first enemy that shall seize upon them.

But this objection is urged, “That, if such an institution was necessary against foreign invasions; yet by arming the people, they will be made *seditionous*, and of course become dangerous to the internal frame of the Government.”—I see plainly from whence this apprehension first arose;—persons, who peruse the history of this country, but who from an ignorance of its laws enter not sufficiently into the spirit of its institutions, have built this objection on the civil dissensions which the Barons were once able to raise by means of the feudal militia; *but it is certain that the people were not as principals concerned in those wars: not they, but the Barons were seditious.*

LOOK THRO’ THE ANNALS OF THE WORLD,
AND SEE IF ANY ONE INSTANCE OF A MILITIA
CAN BE PRODUCED, THAT WAS SEDITIOUS OF
ITSELF; OR OF A PEOPLE, WHO, WHEN THE
SWORD WAS PUT INTO THEIR HANDS, CON-
VERTED IT TO THEIR OWN DESTRUCTION.—
Free States have almost always been subject to commotions,
and

and the same have generally been defended by a militia; but that the military establishments of such a people were the cause of their commotions can never be proved;—the republic of *Carthage* is a singular instance of a free people, that owed their defence to mercenary soldiers; and yet she was nevertheless fertile in dissensions; and though *Rome* had as many soldiers as citizens, though her senators and plebeians had frequent contests for power, where the balance was unequally adjusted, yet her people, when in the greatest fury, and when driven by injuries almost to despair, never once had recourse to arms; they urged their claims by supplications and secessions; and though disciplined and ready at all times to take up arms in the defence of their country, they never lifted up a hand against it; for several centuries not a life was lost amidst all their contentions; and it was not until the nature of their armies was changed, until their legions received pay, were transported into distant provinces, and never suffered to return to their domestic occupations; in a word, not until the *honest militia-men* of Rome were changed into *standing forces*, that their contests blazed out into civil wars destructive to the commonwealth.

The miseries and oppressions, which some states have suffered from the common sort of armies, have made many absurdly apprehensive, that a firelock, or a red coat must necessarily alter the disposition of the persons who have them: they do not observe, that these evils have arisen from such only, who have made war their profession; it is the idle and dissolute manner of living, that alone debauches the soldier's inclination, when without home, without industry, and without occupation, he must subsist either by pay or by plunder; armies composed of such as these have sometimes enslaved a nation under pretence of doing themselves justice; our history furnishes a remarkable instance of this kind, which shews clearly what it is that converts a soldier into a rebel, and makes him dangerous to his country. As gallant an army as this nation ever saw, and which at the same time was particularly styled the *Modest* and *Self-denying*, consisted of the youths of London, who, though unused to arms and drawn in haste out of town, gave signal proof of courage through the whole civil wars, and at last defeated the royal army by one decisive blow at *Naseby*: If this army of the Parliament, after they had done the business for which they were called out, had been sent back to their trades, and had only been made use of, as there was occasion for them, they would then have been in the nature of a militia, and there would have been no danger to have been apprehended from them, but by keeping them for several years constantly in the field, after the war was over, by training them to idleness, and making them forget their trades, and depriving

depriving them of the common methods of subsistence, they were made not at all the better soldiers, but became the worse citizens; their dispositions were totally perverted; their modesty changed to presumption; they grew imperious and seditious; they refused to go to Ireland, though they were commanded; neither would they be disbanded, though the parliament had no other occasion for their service,—they petitioned—they remonstrated—they rebelled—and at length destroyed the authority of that parliament which at first called them forth, and had performed such wonders by their assistance.

Most of the nations of Europe were, till within these three centuries, defended by militias;—and did not Holland, when her own citizens were obliged to be trained, defend herself against the power of Spain? Could the arms of Philip, conducted by the genius of the Prince of Parma, ever penetrate far into *her* country? And did not the sieges of Harlaem, Alcamar, and Leyden, when they were garrisoned only by their own burghers, break the spirit of the Spanish veterans? And yet this very country was over-run, and most of her towns taken, in the space of a month, in the year 1672, when the defence thereof was entrusted to 25,000 *mercenaries*:—It is useless to cite any more examples; the very origin of standing forces shews, that they were not thought indispensably necessary for the defence of a country; they were first raised to suppress rebellious subjects, to command the unwilling subjection of distant and oppressed provinces—or to extend the conquests of some aspiring prince into distant countries, for which he could not legally command the service of the militia.

It is by means of such an institution as this, that the little country of Switzerland is able to call together fourscore thousand brave men at all times for its defence; and so small is the charge of maintaining them, that although the people of this republic are less loaded with taxes than those of any part of the world beside, yet they are able to save out of their common revenue a considerable sum of money yearly, which they keep in their treasuries against any emergent occasion; and the surprising acts of valour, which this militia has performed, have induced an ingenious writer to draw a parallel between the military achievements of this little collection of Cantons, and those of the free States of Greece.

Shall we, after this therefore laugh at a militia?—call it an undisciplined mob?—and think it useless for the defence of our country?—I wish only that they, who are guilty of this ridicule, may on the like occasions behave no worse than these Swiss?—or, because arbitrary princes have for these three last centuries neglected their militias, and for their own views rendered them purposely useless and undisciplined, shall we therefore conclude, that no regulations can bring them back to their

ancient perfection, or make them again serviceable?—Or shall we more absurdly argue, that the same rules that make a militia regular and well-disciplined in Switzerland, will be unsuccessful in England, and that the same causes will not produce the same effects in one country as well as another?

But it may further, perhaps, be urged, “that a militia is unnecessary, since we may be better defended by augmenting our national army, or by hiring foreign troops.”—I shall answer plainly to this objection, that both these methods are dangerous and unconstitutional.—I entertain not those absurd apprehensions of a standing army, that possess some people, neither do I think that 20,000 soldiers of that sort could ever be destructive to our constitution; but I am confident, that an army may be so far augmented as to become destructive:—I entertain also the highest opinion of the officers of our present army; I believe them to have as warm a regard for their country as any native whatsoever: many of them are men of property, others are heirs or allied to families of property, and would lose as much in the general wreck as any; but I am sure that these gentlemen will agree with me, that in some future century it might be possible to alter and model such an army, and make it consist of persons not so public-spirited as themselves; and if its numbers should happen at that time to be considerably augmented, no more, perhaps, than what would be absolutely necessary for our security against a foreign invader, I should then (if I chanced to live in such an age) be seriously apprehensive indeed for the liberties of my country;—so that we are in this dilemma, either to keep our army so low as to be inadequate to the purposes for which it is intended,—or to raise it so high as to make it one time or other dangerous to our constitution; for certain it is, that any number of troops which will be sufficient to repel the strength of France, will have the power, if they should have the inclination, to enslave us; and that they who can defeat them, who would otherwise be superior to us, must necessarily have this country at their mercy.

Here, indeed, it may justly be replied, that these dangers are very far remote, and that we are not only secure at present from any apprehensions of this kind, but that we also possess a large stock of freedom in reversion; since there is an heir to the crown, whom nature has adorned with virtues, peculiarly calculated to make the people of this country hereafter happy, and who will prolong for many years the free spirit of his grandfather's government:—But it is the duty of an *Englishman* to be even *timidly suspicious in the concerns of his liberty*, and to labour for its continuance in his most remote posterity; to accept, with gratitude, the favours of good princes, but to secure himself with caution against the oppressions of the bad.—

And shall we not be careless guardians of our country's rights
if

if lulled asleep by some temporary advantage, we should not decry a distant danger, or through indolence should not labour to prevent it?

But, if there was no danger in this method, the expence of it is alone a sufficient reason to reject it: a militia, consisting of upwards of 60,000 men, will cost one year with another, under 160,000*l.* and will put the nation to no further charge, but only during the time of an actual invasion:—A regular standing Force, of the same number, will exceed two millions a year.

One more method of defence remains to be considered, which is that in which we at present place our trust, “the defence of *foreign mercenaries.*” The expence of these would alone be a sufficient objection to them, which is greater in every particular, than the charge of a standing army of native soldiers; for besides their subsistence, which they receive at the same rate as our national troops, we pay for them subsidy-money, levy money, transporting money, recruiting money, every one of which articles are carried to a vast height; and for some of them we pay double what they cost the prince who supplies them; but the more material arguments against them is, that they are more dangerous even than a standing army can be to our constitution. I shall here speak with caution; for if I was to urge all the objections which might be brought against troops of this sort, especially at a time when we are under the unhappy necessity of employing them, I may appear, perhaps (what I am sure is not my intention) desirous of inflaming; my countrymen may form some idea of their danger from one or two instances in their own history—*troops of this sort have always been unuseful or dangerous to those who employ them; their conduct at first has generally been peaceable and ensnaring—at last seditious and destructive; and those states, that have carried the points, which they intended by their assistance, have usually, in the event, been enslaved by them.*

The exorbitance of taxes would in time be reduced; and we should then no longer be obliged to augment a debt, till at last it destroys us,—though perhaps in the midst of successes; which makes us, in fact, always weaker by our conquests, and poorer by our acquisitions; *and war would then no more be a fever of the state, which, let the event be good or bad, has constantly preyed on the vitals of this country.*

Our first point must be to secure ourselves at home: This effect can alone be produced by the establishment of a NATIONAL FORCE SUFFICIENT FOR OUR DEFENCE, BUT NO WAYS REPUGNANT TO THE SPIRIT OF OUR CONSTITUTION—a constitution, which having been preserved (*though much in ruins*) by providential events from the encroaching Spirit of the *Tudors*,—and again rescued by the virtue of our ancestors

cestors from the more hasty violations of the *Stuarts*, has now survived for almost seventy years, repaired, improved, but not wholly perfect; its civil institutions have been largely and wisely considered,—its military establishments have been totally neglected; and it has paid most dearly for the neglect, by losses, by debts, by panics, by dishonor;—its case is not, as yet however, totally irretrievable.

When this island was frequently plundered, and almost conquered by the *Danes*, the perfidious invaders of ancient times, the cause of it was, that a proper attention had not been paid to the discipline of the *Saxon* militia; and it is recorded among the wise institutions of the virtuous *Alfred*, that by new regulations he brought back this once martial body to its *first state of perfection*, and thereby relieved his kingdoms from the fury of *Danish* incursions.——

LET THIS THEN BE THE BASIS ON WHICH
ALL OUR FUTURE SCHEMES OF POLICY MAY BE
ERECTED.

F I N I S.

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